



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

June 14, 1989

Mr. Robert J. Collins
Sr. Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

Dear Mr. Collins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5770; this decision is OR89-186.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Houston received a request for correspondence and memoranda relating to the city's work with the Federal Aviation Administration to prepare a "Bird Strike Analysis" for the city's proposed airport. The requestor also seeks a copy of the Environmental Assessment; you indicate this will be released. You claim that the bird strike memoranda and correspondence fall within sections 3(a)(3) and 3(a)(11) of the act.

Section 3(a)(3) protects information if it relates to the litigation such that withholding the information is necessary to preserve the governmental body's interests in the litigation. Open Records Decision No. 478 (1987). Based on the facts you present, litigation is not reasonably anticipated. Section 3(a)(11) protects advice, opinion, or recommendation used in a governmental body's executive

Mr. Robert J. Collins
June 14, 1989
Page 2

deliberations. See Open Records Decision No. 464 (1987).
The information at issue does not meet this test.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-186.

Yours very truly,

Open Government Section
of the Opinion Committee

Open Government Section
of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

Ref.: ID# 5770